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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,769	10/12/2005	Gerrit Hollemans	NL 030392	2211
24737 7590 04/12/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER MONIKANG, GEORGE C				
ART UNIT 2614		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,769

Applicant(s)

HOLLEMANS ET AL.

Examiner

GEORGE MONIKANG

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 9-14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 9-14, 16 and 20-24 is/are rejected.
- 7) ☒ Claim(s) 4 and 17-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 10/552,769.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION***Response to Arguments***

Applicant's arguments filed 2/16/2010 have been fully considered but they are not persuasive.

With respect to applicant's argument that it is not the designer's preference to enable the Fischer reference to increase the volume of a media device on one earbud while decreasing the volume on another earbud, the examiner maintains. Though the controls of Fischer, like the applicant argues, discloses placing opposing controls on one earbud, it would have been the designer's preference to place the opposing volume controls on different earbuds just like Fischer discloses placing the opposing controls of "play" and "stop" on different earpieces (*Fischer, fig. 1: 28; fig. 2: 36*).

In light of applicants arguments filed 2/16/2010 regarding claim 1 overcoming the prior arts of record, the previous rejection has been withdrawn. However, upon further consideration of the previous, a rejection is made in view of previously used Vossler and Fischer and further in view of Hinckley et al.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2614

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3, 5, 9-14, 16 & 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vossler, US Patent 7206429 B1, in view of Fischer, US Patent Pub. 20020003889 A1, and further in view of Hinckley et al "Sensing Techniques for Mobile Interaction". (The Fischer and Hinckley et al references are cited in IDS filed 10/3/2007)

Re Claim 1, Vossler discloses a personal audio system comprising: a remotely controllable device, a first controller for remotely controlling the device by sending a first control signal to the device (fig. 3; col. 3, lines 34-45), a second controller for remotely controlling the device by sending a second control signal to the device (fig. 3; col. 3, lines 46-52), wherein: each of the first controller and the second controller includes an outer surface with a button control area (fig. 3), and is configured to: be substantially worn by a human ear (figs. 1b-2); but fails to disclose at least one of the one or more functions being controlled by the first controller differs from one or more functions being controlled by the second controller. However, Fischer discloses a headset with two different controls on each of the left earpiece and the right earpiece such that each of the controls on

Art Unit: 2614

the earpieces controls different components of a media device (Fischer, figs. 3, 5 & 12; paras 0008, 0010 & 0034: right side of headphone system/first controller; left side of headphone system/second controller; each side of the headset carries different controls). It would have been obvious to modify the controls of Vossler (Vossler, figs. 1b-2; col. 3, lines 46-52) such that each of the controls of the earpiece have different controls as taught in Fischer (Fischer, figs. 3, 5 & 12; paras 0008, 0010 & 0034: right side of headphone system/first controller; left side of headphone system/second controller; each side of the headset carries different controls) for the purpose of coordinating the playing of audio sounds.

The combined teachings of Vossler and Fischer fail to disclose the controller includes an outer surface with a touch-sensitive area; and is configured to detect a touching of touch-sensitive area and to send the control signal to control one or more functions of the personal audio system based on the touching. However, Hinckley et al discloses a device with multiple touch sensors that are used to control the device (Hinckley et al, page 92: Touch Sensors). It would have been obvious to modify the controls of Vossler and Fischer such that they are touch sensitive as disclosed in Hinckley et al (Hinckley et al, page 92: Touch Sensors) for the purpose of creating easier control by the user.

Claims 2-3, 5, 9-14 are analyzed and rejected according to claim 1.

Claims 16 & 20-21 are analyzed and rejected according to claim 1.

Re Claim 22, the combined teachings of Vossler, Fischer and Hinckley et al disclose the device of claim 21, but fail to explicitly disclose wherein the indication of touching of the first earbud causes a volume of the output signals to

Art Unit: 2614

increase, and the indication of touching of the second earbud causes the volume to decrease. Though the controls of Fischer, like the applicant argues, discloses placing opposing controls on one earbud, it would have been the designer's preference to place the opposing volume controls on different earbuds just like Fischer discloses placing the opposing controls of "play" and "stop" on different earpieces (*Fischer, fig. 1: 28; fig. 2: 36*) for the purpose of making the system more dynamic.

Claims 23-24 have been analyzed and rejected according to claim 22.

Allowable Subject Matter

1. Claims 4 & 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. The following is a statement of reasons for the indication of allowable subject matter for claim 4: The prior art does not teach or moderately suggest the following limitations:

the outer surface of at least one of the controllers includes a second touch-sensitive area, such that the second touch-sensitive area is touched substantially by the ear when the controller is substantially worn in or by a human ear, the controller being arranged to send the corresponding control signal only if the second touch-sensitive area is touched,.

Limitations such as these may be useful in combination with other limitations of claim 1.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE MONIKANG whose telephone number is (571)270-1190. The examiner can normally be reached on maximum flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian C. Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 2614

/Vivian Chin/
Supervisory Patent Examiner, Art Unit 2614